IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2370 OF 2006
AND
CRIMINAL WRIT PETITION NO. 2371 OF 2006

Mr.Sanjay Sen ...Petitioner
V/s.
M/s.Flat India Ltd. & Anr. ...Respondents

Mr.P. Chande i/b. Mr.Dunmorr Sett for the Petitioner.
Mr.S.R. Chitnis, Senior Counsel with Ms.V.R. Raje i/b. M/s.Crawford Bayley & Co. for Respondent No.1.
Mr.Y.M. Nakhawa, APP for State.

CORAM : V.M. KANADE, J.

DATED : OCTOBER 19, 2007

ORAL JUDGMENT :-

. The petitioner in both these petitions is challenging the order of issuance of process by the Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai, in two complaints which are filed by the respondent herein. Since the parties are same and the complaint is also filed under Section 138 of the Negotiable Instruments Act and the facts are identical, both these petitions can be disposed of by a common judgment.

2. It is submitted by the learned Counsel for the

petitioner that there are no specific averments against the present petitioner in both the complaints and as such, order of issuance of process against the petitioner herein is liable to be set aside. In support of this, he relied on number of judgments of the Apex Court and this Court. He invited my attention to the complaint and more particularly, paragraph 3 of the said complaint. He submits that since the allegations made in the said paragraph are vague, the order of issuance of process is liable to be set aside. He then submitted that even on facts, there was sufficient evidence to indicate that the petitioner herein is permanently residing in New Delhi. He invited my attention to the compilation of documents at Exhibit-E which is annexed to the petition and also compilation of documents at Exhibit D-1 of Writ Petition No.2370/2006. He also invited my attention to the judgment of the Apex Court in the case of **State of Orissa vs. Debendra Nath Padhi, reported in 2005 SCC (Cri) 415** wherein the Apex Court has observed that while exercising the inherent jurisdiction under Section 482 of the Cr.P.C. and writ jurisdiction under Article 226 of the Constitution of

India, the Court has ample powers to pass such orders as may be necessary to prevent abuse of process of any court and to secure ends of justice.

3. Shri Chitnis, learned Senior Counsel for the respondent, on the other hand, submitted that in the complaint, the averments made against the petitioner were not merely vague but there was something more than the usual averments which are made normally in cases where allegation is made against the Director of the company. He submitted that apart from stating that the accused nos.2 to 5 were responsible for the day to day affairs of the company, it was further specifically stated that accused nos.2 to 5 used to place orders for the purchase of cars with the complainant. He submitted that in this case, ratio of the judgments on which reliance is placed by the Counsel for the petitioner will not apply to the facts of the present case. He further submitted that the case is pending since the year 2000 and that notices were served on all the directors at the address of the company. He submitted that the petitioner continued to be the director of the

company and therefore, there was no occasion for the complainant to serve the petitioner at Delhi as were submitted by the Counsel for the petitioner.

4. In my view, the submission made by the learned Counsel for the petitioner cannot be accepted at this stage. Perusal of averments made in para 3 discloses that apart from stating that the accused nos.2 to 5 are incharge and responsible for the day to day affairs of the company, it has also been mentioned that the accused nos.2 to 5 used to place orders for purchase of cars for and on behalf of accused no.1. In view of the additional material which has been mentioned in the complaint, the complainant will have the right to adduce evidence to show the manner in which the petitioner had taken part in day to day business of the accused no.1 company. In all the judgments on which reliance is placed by the learned Counsel appearing on behalf of the petitioner, it has been categorically held that vague material when coming in parts are not sufficient for prosecuting all the directors of the company and that merely because a person is a director of the company

ipso facto, would not be a ground for filing of a complaint against him under Section 138 of the Negotiable Instruments Act. Counsel appearing for the petitioner has relied on the following judgments :-

1) (2005) 8 SCC 89 - SMS Pharmaceuticals Ltd. V/s. Neeta Bhalla & Another,

2) 2002 CRI.L.J. 4155 (Madras High Court) - S.N. Bangur & others V/s M/s.Klen & Marshalls Mrfs. & Exporters Pvt.Ltd., Chennai,

3) H.M. Dave V/s. Gitanjali Shah & Anr.

4) 2005 All MR (Cri) 956 - Madanlal Taparia & Anr. V/s. Bank of Rajasthan Ltd. & Anr.

5) 2006(1) Bom.C.R. (Cri) 5 - Shishir B. Desai & another V/s Ceat Financial Services Ltd. & another

6) 2007(1) Bom.C.R. (Cri) 508 - Haresh Java V/s. Vysya Bank Leasing Ltd. & anr.

7) 2006(2) Bom.C.R. (Cri) 769 (Nagpur Bench) - D.P. Jain & Co. & Ors. V/s Green Earth Asphalt & Power Pvt.Ltd.

8) 2007 All MR (Cri) 560 (S.C.) - Saroj Kumar Poddar V/s State (NCT of Delhi) & Anr.

9) 2006(2) Bom.C.R. (Cri) 720 (S.C) - Sabitha Ramamurthy & Anr. V/s. R.B.S. Channabasavaradhya

10) 2006 All MR (Cri) JOURNAL 251 (Andhra Pradesh High Court) - Sri Vijayalaxmi Agencies, Nandyal, Kurnool District & Ors. V/s. State of

A.P. & Anr.

11) 2000 ALL MR (Cri) Journal 173 - K.Janaki Manoharan & Anr. V/s. Gayatri Sugar Complex Ltd., Hyd. & Anr.

12) 1998 Company Cases Vol.93 - State of Haryana V/s. Brijlal Mittal & Others (S.C)

13) 2003(1) Bom.C.R. 517 (SC) - Katta Sujatha V/s. Fertilizers & Chemicals Travancore Ltd. & another.

14) 1998 Company Cases Vol.91 - Nucor Wires Ltd. & Others V/s. H.M.T International Ltd. (Karnataka High Court)

5. There cannot be any dispute regarding the ratio laid down by the Apex Court and the various High Courts in these cases. However, in all these cases, general averments were made in the complaint that accused were in charge and responsible for day to day affairs of the company and therefore, in such circumstances, it has been held that such a director cannot be prosecuted under Section 138 of Negotiable Instruments Act and that more material has to be pleaded in the complaint.

6. In my view, in the present case, said material can be found in the complaint itself. Apart from stating that the accused nos.2 to 5 were in charge of

day to day affairs of the company, there is a reference that accused nos.2 to 5 used to place orders for purchase of cars. In para 8, efforts taken by the complainant to serve accused nos.2 to 5 has been mentioned.

7. So far as the documents on which reliance is placed by the petitioner is concerned, in my view, at this stage, it would not be possible to look into the veracity of the said documents. Therefore, at this stage, it will not be possible to make any comments on the aforesaid documents.

8. Under the circumstances, writ petitions are dismissed.

9. The trial Court is directed to expedite the case and decide it, as expeditiously and in any case, within a period of eight months from today. The trial Court, however, shall exempt the petitioner from appearing in the trial Court. His plea may also be recorded through Advocate provided he gives an undertaking that he shall

not raise any objection regarding the plea being recorded by his Advocate. The trial Court may grant exemption to the petitioner in appearing in the said two cases.

(V.M. KANADE, J.)